

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**LAURENCE GORMLEY,
Petitioner,**

v.

**UNITED STATES OF AMERICA,
Respondent.**

:
:
:
:
:
:
:
:
:

CIVIL ACTION

NO. 05-5945

MEMORANDUM AND ORDER

Tucker, J.

March 24th, 2006

Presently before the Court is Petitioner's Habeas Corpus Motion to Vacate/Set Aside/Correct Sentence Pursuant to 28 U.S.C. § 2255 (Doc. 37). For the reasons set forth below, upon consideration of Petitioner's arguments,¹ the entire record, and the applicable law, the Court is of the opinion that the Petitioner's Habeas Motion is **DENIED**.

BACKGROUND

Laurence Gormley plead guilty on January 10, 2005 to two counts of distribution of child pornography in violation of 18 U.S.C. § 2252(a)(1)² and one count of possession of child

¹ In a letter to the Court dated January 3, 2006, the government noted that consistent with Rule 4(b) of the Rules Governing 28 U.S.C. § 2255 proceedings, the government will await the Court's Order before responding to Petitioner's 28 U.S.C. § 2255 petition.

² On or about November 23, 2003 and December 11, 2003 (each date constituting a separate count of the Indictment), Petitioner Laurence Gormley knowingly transported and shipped in interstate commerce from his home in Bristol, Pennsylvania to the Yahoo! newsgroup "Zipping_Around" in Sunnyvale, California, visual depictions of minors engaging in sexually explicit conduct, and the production of those visual depictions involved the use of minors engaging in sexually explicit conduct.

pornography in violation of 18 U.S.C. § 2252(a)(4).³ On April 28, 2005 Petitioner was sentenced by this Court to a term of 120 months imprisonment. On December 13, 2005, Petitioner Gormley filed a Motion to Vacate/Set Aside/Correct Sentence under 28 U.S.C. § 2255 (Doc. 37) alleging ineffectiveness of counsel.

STANDARD OF REVIEW

“The benchmark for judging any claim of ineffectiveness must be whether counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668, 686 (1984). The two-pronged *Strickland* test requires the defendant to show not only that counsel’s performance was deficient, but also that “such deficient performance prejudiced the defense.” *Id.* at 687. In order to prove deficiency of counsel, defendant must show that “counsel made errors so serious that counsel was not functioning as the counsel guaranteed the defendant by the Sixth Amendment.” *Id.* Furthermore, defendant must prove that counsel’s performance prejudiced the defense by illustrating that “counsel’s errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.” *Id.* In addition, a defendant must show that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.* at 694. If petitioner does not satisfy either prong of the test, his claim for ineffective assistance of counsel fails, making a determination on the remaining prong

³ On or about March 10, 2004, in Bristol, Pennsylvania, Petitioner Laurence Gormley knowingly possessed computer hard drives, compact disks and other matter that contained a visual depiction, that is, approximately thousands of still images and dozens of videos, that had been shipped and transported in interstate and foreign commerce, and the production of these images involved the use of minors engaging in sexually explicit conduct and the visual depictions were of minors engaging in sexually explicit conduct, including one entitled “Baby.rape” that contained a video of a pre-pubescent girl crying while being forcibly vaginally penetrated by an adult male penis.

unnecessary. *Id.* at 697.

DISCUSSION

In his petition, Petitioner asserts that he was denied effective assistance of counsel because there was no reasonable basis for sentencing counsel's failure to object to an enhancement of 5 levels in Petitioner's adjusted offense score based upon U.S.S.G. § 2G2.2(b)(2)(B). Petitioner attempts to establish his claim by asserting that the record fails to establish that he distributed pornographic material in exchange for something of value. Furthermore, Petitioner asserts that as to the counts for which he was charged and to which he pleaded guilty, the record did not show that he acted in consideration of the receipt of "other images" as set forth in Section 21 of the Presentence Report. Accordingly, Petitioner claims that he is entitled to resentencing as he was prejudiced by the guideline score which the Court considered in fashioning his sentence on April 28, 2005.⁴ The Court does not agree. The record in this case makes it clear that Petitioner distributed child pornographic material in exchange for access to more pornographic material.⁵ The open plea memorandum, to which the Petitioner

⁴ The statutory penalty for each violation of 18 U.S.C. 2252(a)(10) is a mandatory minimum of five years imprisonment, a statutory maximum of twenty years imprisonment, a \$250,000 fine, three years of supervised release, and a special assessment of \$100.

The maximum statutory penalty for a violation of 18 U.S.C. 2252(a)(4) is ten years imprisonment, a \$250,000 fine, three years of supervised release, and a special assessment of \$100.

Total maximum sentence is fifty years imprisonment, including a five-year mandatory minimum, a \$750,000 fine, three years of supervised release, and a \$300 special assessment.

On April 28, 2005 Laurence Gormley was sentenced to 120 months imprisonment, pursuant to the statutory mandatory minimum. The Guideline Sentence was 121-151 months based on offense level 32 criminal history Category I.

⁵ According to Laurence Gormley, he began collecting pornography a couple of years ago. (Guilty Plea Mem. at 4). He collected and exchanged child-pornographic material by participating in Yahoo! and MSN groups on the Internet. At the time of his arrest, Petitioner possessed thousands of still images, dozens of videos containing child pornography and admitted to uploading numerous images of child pornography onto the Internet. (*Id.* at 3-4).

agreed in his colloquy, states that Petitioner “distributed these [pre-pubescent pornographic] materials for the receipt and expectation of receipt of a thing of value, but not for pecuniary gain.” (Guilty Plea Mem. at 5). Although Petitioner did not receive a pecuniary gain in his distribution of child pornography, it is apparent that Petitioner gained value from distributing child pornography because in doing so, he gained access to more pornography, expanding his catalogue of child pornography. Thus, Petitioner acted in consideration of the receipt of “other images” as set forth in Section 21 of the Presentence Report and counsel’s failure to object to an enhancement of 5 levels in Petitioner’s adjusted offensive level based upon U.S.S.G. § 2G2.2(b)(2)(B) at the sentencing hearing would have been without merit. Sentencing counsel’s performance was not deficient in this regard. Accordingly, Petitioner’s claim for relief on this basis is denied.

CONCLUSION

After careful review of the record, the Court concludes that Petitioner’s Habeas Petition to Vacate/Set Aside/Correct Sentence Pursuant to 28 U.S.C. § 2255 is denied. An appropriate Order follows.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

	:	
LAURENCE GORMLEY,	:	
Petitioner,	:	
	:	CIVIL ACTION
v.	:	
	:	NO. 05-5945
UNITED STATES OF AMERICA,	:	
Respondent,	:	
	:	

ORDER

AND NOW, on this ____ day of March, 2006, upon careful consideration of the pleadings and record herein, and after review of Petitioner's Habeas Corpus Petition to Vacate/Set Aside/Correct Sentence Pursuant to U.S.C. § 2255 (Doc. 37), **IT IS HEREBY ORDERED AND DECREED** that Petitioner's Habeas Petition, pursuant to 28 U.S.C. § 2255, is **DENIED** and **DISMISSED**.

IT IS FURTHER ORDERED that a certificate of appealability, pursuant to 28 U.S.C. §

2253, is **NOT GRANTED** and that the Clerk of the Court shall mark this case as **CLOSED**.

BY THE COURT:

/s/ Petrese B. Tucker

Hon. Petrese B. Tucker, U.S.D.J.